IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2047 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BIYANKA CONSULTANCY THRO.PROPRIETOR - Petitioner(s)

Versus

G.L.F.L. SECURITIES LTD. - Respondent(s)

==========

Appearance :

MR D.S. NANAVATI FOR NANAVATI & NANAVATI for Petitioner(s) : 1,

MR SS PANESAR for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 02/09/2006

ORAL JUDGMENT

1 This petition though styled as a petition under Articles 226 and 227 of the Constitution is in effect a petition under Article 227 of the Constitution. The petitioner herein is the original-defendant who has challenged order dated 12.10.2000 made by the learned Trial Judge in Summary Suit No. 2281 of 1999.

2 The plaintiff Company filed a Summary Suit seeking to recover a sum of Rs. 11,56,087.52 which was due and payable by the defendant as on 30.4.1998 according to the plaintiff after adjusting debits and credits of other transactions. The defendant appeared before the Trial Court and sought leave to defend without any condition being imposed. The Trial Court in the impugned order made on 25.10.2000 granted leave to defend on condition of the defendant depositing a sum of Rs.1,50,000/- within eight weeks from the date of the order. It is not necessary to record the history of the litigation by way of Civil Revision Application and conversion into present petition thereafter.

3 Mr.D.S. Nanavati, learned Advocate appearing on behalf of the petitioner-defendant submitted that once the Trial Court had come to the conclusion that number of triable issues exist it was incumbent upon the Trial Court to grant unconditional leave. That the Trial Court having granted conditional leave had committed an error in law which could be termed to be a jurisdictional error requiring intervention at the hands of this Court. In support of the proposition made he has placed reliance on decision of Division Bench of this Court in the case of *The New Ashapuri Co-operative Housing Society Ltd. & Anr. Vs. Arvindkumar Manilal Patel (1975)*

16 GLR 53 as well as decision of learned Single Judge of this Court in the case of *M/s. Ratilal B. Shah & Co. V/s. Pari Prafulchandra Kantilal & Anr., 24 GLR 700.* Mr. Nanavati has also invited attention to the communications dated 1.7.1997 and 11.9.1997 to submit that there were serious disputes as to the amount, if any, which could be due from the defendant to the plaintiff. Mr.Nanavati contended that though the defendant had called upon the plaintiff to settle the account the plaintiff had failed to do so and in fact according to the defendant a sum of Rs. 4 lacs and odd was due from the plaintiff to the defendant. The learned Advocate was fair enough to admit, when a query was put to him by the Court as to whether any counter claim or a suit had been filed demanding such outstanding dues from the plaintiff, that no such claim had been made or suit had been filed.

4 The only requirement that the Court is expected to look into in a petition under Article 227 of the Constitution is primarily whether the impugned order made by the Trial Court is in exercise of jurisdiction vested in it or is without jurisdiction or in excess of jurisdiction. The only other manner in which this Court would be permitted to interfere is in the event the impugned order is found to be perverse. If the Court comes to the conclusion that in the same set of facts and circumstances and evidence on record a different view is possible, that by itself would not be sufficient to permit this Court to exercise jurisdiction and entertain the petition so as to intervene in the impugned order made by the Trial Court.

5 Applying the aforesaid settled principles to the facts of the case it is not possible to state that the Trial Court has committed any error in exercise of jurisdiction. May be, on the facts and circumstances of the case and the evidence on record, different view might have been possible and defendant could have been granted unconditional leave to defend, but that by itself will not permit the High Court to intervene in the order made by the Trial Court in exercise of its discretionary jurisdiction. As can be seen from the facts recorded by the Trial Court and on overall reading of the communications addressed by the defendant to the plaintiff, the defendant accepts that there is a liability of the defendant to clear dues in favour of the plaintiff, the only caveat being, according to defendant there are outstanding dues from other transactions in which according to defendant there are outstanding dues from the plaintiff to the defendant. In fact the defendant accepts as a matter of fact that qua certain transactions in which the defendant has become liable to the plaintiff, the plaintiff may wait till the recovery is effected in turn by the defendant from its clients. In other words, the defendant admits the liability requesting the plaintiff to await settlement of the Account of the defendant with third party and on such realization by the defendant from the third party the plaintiff would be paid of.

6 In the aforesaid facts and circumstances of the case, it is not possible to interfere in the impugned order made by the Trial Court in absence of any jurisdictional error. The discussion on facts of the case is only to satisfy the conscience of the Court to ensure that no grave or palpable injustice has resulted by virtue of the

impugned order. The petition is accordingly rejected. Rule discharged. There shall be no order as to costs.

7 In light of the fact that the impugned order directs the defendant to make deposit within eight weeks from the date of the order, and thereafter as the operation of the said order had been stayed it would be in the fitness of things if the same time viz., period of eight weeks is granted to the defendant. The defendant-petitioner is accordingly directed to deposit the amount within a period of eight weeks from today.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt